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SUMMARY RECORD OF THE 1476th MEETING

Held at Headquarters, New York,
on Tuesday, 19 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third period report of Mauritius (CCPR/C/64/Add.12; HRI/CORE/1/Add.60)

1. At the invitation of the Chairman, Mr. Peeroo and Mr. Seethulsingh (Mauritius) took places at the Committee table.

2. Mr. PEEROO (Mauritius) said that his delegation regretted the late submission of the third periodic report, due in 1988. The fourth periodic report, due in November 1993, would be submitted by December 1997. A Human Rights Unit had now been established in Mauritius to handle the preparation of reports for all human rights instruments to which the country was a party.

3. As a State Member of the United Nations engaged in the promotion and consolidation of human rights, Mauritius was very concerned about the violation of human rights in the Republic of Myanmar and had recently forgone a commercial deal with that country even though it would have been economically advantageous. Mauritius was also acting to promote human rights in the context of the Commonwealth, the Non-Aligned Movement and the Organization of African Unity. At the regional level Mauritius was active in the work of the Asian-African Legal Consultative Committee.

4. His Government was committed to the principles of the separation of powers and the independence of the judiciary. It was intended to appoint a presidential commission to review the judicial system so as to improve the administration of justice and access by the citizen to justice. In particular, the legal aid system would be overhauled to help people from lower-income brackets. The Government also intended to take legislative action to guarantee greater freedom and fairness in elections, which international observers were welcome to monitor.

5. His Government was also committed to the liberalization of broadcasting, which would allow the pluralistic expression of views. To that end an independent broadcasting authority would be established, while provision would be made to prevent any unhealthy concentration of control or ownership of the media.

6. The Government was also introducing legislation to promote a healthy industrial environment and was seeking to reach consensus on industrial relations, following criticism of the Trade Unions and Labour Relations Bill. It was also the intention of the Government to enact legislation to ensure equal opportunities in education and employment, and to establish an equal opportunities commission.

7. To prevent abuses by police officers, a police complaints board, independent of the police force, would be created. In addition, the Law Reform Commission would be requested to make proposals to further consolidate human rights. Lastly, the Government had decided to give wide publicity to the rights

guaranteed under the Covenant so as to create a climate of freedom and awareness of fundamental rights.

8. Mr. SEETHULSINGH (Mauritius) said, with reference to article 1 of the Covenant, that general elections had been held in December 1995 in which 85 per cent of the electorate had voted, with the new Government winning 60 seats to the opposition's 6 seats.

9. With reference to article 2, the Constitution did not establish an official language. The Education Act provided that the medium of instruction was English, while under the Constitution either English or French could be used in the National Assembly. In the courts witnesses could use any of the several languages spoken in Mauritius and interpretation services were made available. In the event of appeal to the Privy Council in London, the proceedings were translated into English.

10. Regarding article 3, the Income Tax Act 1995 gave equal rights to men and women, including married women, in declaring income and claiming deductions. The Constitution had been amended to ensure equality between men and women, so that any law which might discriminate on the basis of sex would be unconstitutional. That amendment had resulted in consequential changes in the legislation relating to citizenship. In particular, children born to Mauritian citizens outside the country were no longer obliged to choose between Mauritian and foreign nationality on attaining the age of majority.

11. With respect to article 5, and the reference in the third periodic report to the case of Heeralall v. Commissioner of Prisons 1992 MR 70, the Supreme Court had reached that decision because no evidence had been adduced before the lower court regarding the existence of an extradition treaty between Mauritius and France.

12. Regarding article 6, the Abolition of Death Penalty Act had come into force in December 1995, and all those who had been sentenced to death but whose sentences had not been carried out had had those sentences commuted to penal servitude for life.

13. With reference to article 9, the Dangerous Drugs Act 1995, not yet in force, would provide for detention in police custody for a period not exceeding 36 hours from the time a person was arrested on suspicion of having dealt in drugs. The aim was to prevent contact with other drug traffickers and to prevent interference with police work or witnesses. Such detainees were allowed access to medical officers.

14. In connection with article 10, regarding the case of the Kenyan national convicted as a drug courier who had given birth while in prison, proceedings were under way for adoption of the child by the convicted woman's sister in Kenya.

15. Regarding article 17, new legislation would allow the authorities to conduct medical examinations of persons suspected of having concealed dangerous drugs inside the body. With respect to article 20, the reference in the third periodic report to the application of the death sentence in the case of certain

treasonable acts was no longer valid. Regarding article 22, the Government had yet to take action on the Trade Unions and Labour Relations Bill.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination and equality of the sexes, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (arts. 1-4 and 25-27 of the Covenant) (sect. I of the list of issues)

16. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Mauritius, namely: (a) follow-up to the Supreme Court's judgement in the case Union of Campement Site Owners and Ors vs. Government of Mauritius and ors 1984 MR 100 as the legal status of the covenant within domestic law, and, particularly, whether any consideration had been given to incorporating the covenant into domestic law and establishing a mechanism whereby contradictions, if any, between domestic legislation - including the Constitution - and the Covenant could be resolved by Mauritian courts themselves; (b) procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (c) concrete steps which had been taken to disseminate information, in the various languages spoken in Mauritius, on the rights recognized in the covenant and on the Optional Protocol; (d) the extent to which the public had been informed of the Human Rights Committee's consideration of the report; (e) current data concerning the number and proportion of women in the political, economic, social and cultural life in Mauritius; (f) when the announced amendments to Section 16 of the Constitution as well as to the Citizenship Laws aiming at removing remaining grounds for discrimination against women were expected to enter into force; (g) further information on the functions, powers and activities to date of the National Children's Council (NCC) established under the aegis of the Ministry for Women's Rights; (h) the practical measures taken to ensure the effective enjoyment by persons belonging to minorities of their rights under article 27 of the Covenant, such as those relating to the number and proportion of members of minority groups in Parliament and in other high posts in public offices and the senior rank of civil service, as well as on any factors or difficulties faced in that regard.

17. Mr. SEETHULSINGH (Mauritius), referring to section I of the list of issues, said that under the Mauritian legal system treaties were not self-executing; effect was given to the provisions of the Covenant by the Constitution and other laws. Where there appeared to be an inconsistency between the Covenant and the existing laws, the legislation was amended to remove the inconsistency with the abolition of the death penalty. As to procedures for the implementation of any views adopted by the Committee under the Optional Protocol, he referred to the Committee's finding that there had been a violation of the anti-discrimination provisions of the Covenant in a particular case, as a result of which the relevant immigration law had been amended. Mauritius stood by the legal principle of pacta sunt servanda, and legislation would be amended wherever necessary, but no specific procedure existed for the implementation of views adopted by the Committee. In other cases, the Committee on the Prerogative of Mercy, established under section 75 of the Constitution, could recommend to the President of the Republic that he should exercise that prerogative.

18. Referring to sections I (c) and I (d), he said that there was widespread public awareness of human rights and fundamental freedoms in Mauritius, and there was a free press which was very much aware of such issues. The new Government intended to pursue its efforts to give the widest possible publicity to human rights. Amnesty International was very active in Mauritius, as were other non-governmental organizations interested in human rights issues. Information regarding the Covenant and other human rights instruments was being widely disseminated. The public had been informed of the current discussions between the Government and the Committee, and members of his delegation would report to the population after the meetings had ended.

19. Turning to section I (e), he said that there were two women ministers in the Cabinet, and 6 out of the 66 members of the National Assembly were women. That compared favourably to the figure of only two women deputies after the 1991 elections. Women were participating more and more in politics, political parties, and local government. In the economic field, there was still a tendency for women to be employed in such fields as nursing or teaching; there were, however, some women entrepreneurs, and women were well represented in academic pursuits. Regarding the judiciary, the country's nine judges included two women, and 50 per cent of magistrates were women.

20. Regarding women's participation in the country's social and cultural life, Mauritius had a long-standing tradition of active participation by women in cultural activities as writers, artists and poets. Women were also very active in community centres in rural areas, where the teaching of useful skills could improve their situation.

21. Concerning the issue raised in section I (f), he said that the amendments to the Constitution and the Citizenship Laws had come into force in late 1995. In response to the request for additional information on the National Children's Council (NCC), he said that that body had not been a total success, but was to be reactivated. For some time, a system had existed for reporting cases of violence against children; a special telephone number had been established for the purpose, and neighbours were encouraged to telephone if they became aware that children were being subjected to violence. Such cases were dealt with very seriously. A Child Protection Act had been enacted in 1994, establishing provisions to remove children who were being ill-treated from their homes; steps were being taken to provide appropriate places for the care of such children.

22. Referring to section I (h), he recalled that Mauritius had no indigenous population and that the population was made up of various immigrant groups from Asia, Africa and Europe. The rights of all communities were guaranteed under the Constitution. The country's two smallest minorities were of French and Chinese origin, but they were also the most prosperous groups. Regarding all other rights protected by the Covenant, whether of a political or personal character, the Constitution guaranteed their equal enjoyment by everyone. For example, section 14 of the Constitution guaranteed to all religious groups the freedom to establish schools. Such groups were given subsidies without discrimination and often used them to pay their clergy. Regarding employment in public service, there were several special commissions which acted independently and whose decisions were subject to judicial review should any individual feel that his rights had been infringed.

23. Mr. EL-SHAFEI said that the report, although short, was very concise and useful; it showed areas where new developments had taken place in Mauritius, and how the rights and freedoms enshrined in the Covenant had been observed and respected in that country. The functioning of the Supreme Court as described in the report was an excellent example of the separation of powers and should be a source of pride for countries in the region. The multiracial and multicultural nature of Mauritian society, and the harmony existing between different religious and ethnic groups, demonstrated how well human rights and fundamental freedoms were respected.

24. Referring to article 1 of the Covenant, he noted that the report referred to a period from 1969 to 1971 during which a state of emergency had been imposed. The report stated that, under section 18 (1) of the Constitution, it was provided that measures taken in such an emergency should be "reasonably justifiable" in dealing with the prevailing situation; there was no other criterion. Recalling that article 4, paragraph 2, of the Covenant provided that no derogation from certain articles of the Covenant could be made even in situations of public emergency, he wondered whether that had been taken into consideration during the state of emergency.

25. Noting that it fell within the competence of the Supreme Court to decide the validity of elections, he requested more information on that practice, and wondered why it was considered necessary that such decisions should be made by a judicial, rather than a legislative, body.

26. Regarding article 27 of the Covenant, the report stated that the Supreme Court had held that the provisions of the Constitution did not warrant the enactment of personal laws for the various minorities of the country. He wondered whether the representative of Mauritius would not agree that in certain cases personal laws were justified because of the particular cultural characteristics of certain communities.

27. Mr. MAVROMMATIS said that it was gratifying that the Government of Mauritius was represented by such a high-level delegation, which showed the seriousness of purpose with which the Government approached matters of human rights and fundamental freedoms. The shortcomings of the report itself had been substantially compensated for by the high quality of the presentation made to the Committee and of the additional information which had been provided.

28. Noting that the Constitution had been amended in order to introduce the concept of discrimination on the ground of gender, he wondered why other grounds of discrimination such as language, religion and social or other origin had not also been incorporated. He hoped that next time the matter was reviewed, the Government would consider rectifying that omission. Under the heading of article 2, the report stated that both the English and French languages were familiar to a large section of the population; he wondered whether children who had grown up speaking another language or dialect at home did not have some difficulty upon entering school, where instruction was given in English.

29. Article 27 of the Covenant, which guaranteed protection of minorities, and hence authorized affirmative action on their behalf in discriminatory situations, did not override the guarantees against general discrimination under

article 2 of the Covenant. He believed the prevailing practice in Mauritius in respect of article 27 - since it did not have any oppressed minorities - was a good one, and that Mauritius was wise not to adopt personal status laws in matters such as inheritance, evidence, legitimation or monogamy, which might lead to reverse discrimination and run counter to other provisions of the Covenant.

30. Mrs. CHANET, welcoming the abolition of the death penalty, asked whether Mauritius planned to ratify the second Optional Protocol. She also wondered why the Committee had received so few communications from Mauritian nationals under the first Optional Protocol, despite the apparently full press coverage of the Covenant's provisions, and what ways the Government could find to publicize the Covenant more extensively throughout the country.

31. She thought it a matter of concern that the Supreme Court of Mauritius had held that it had no jurisdiction to invalidate breaches of the Covenant that were permissible under sections of the Constitution incompatible with its provisions. She would like to know what legal remedies were available in such cases, in the absence of any legislation amending the Constitution.

32. In the case of the protection of minorities under article 27 of the Covenant, the Committee's general comment on that article had clearly stated that articles 2, 3 and 26 of the Covenant could not be overridden in the name of the cultural rights of an ethnic community. By the same token, it was not clear why, when section 16 of the Constitution had been amended to include protection against discrimination on the ground of sex, it had been decided to retain, in subsection (4) (c), the broad exception in respect of personal status law, an exception that violated articles of the Covenant to which Mauritius subscribed.

33. With regard to article 24 of the Covenant, she noted that Mauritian law allowed children to be kept with their mothers in prison until the age of 4, a situation which surely cut them off from necessary outside developmental factors.

34. Ms. EVATT said that Mauritius was a country that respected the rule of law and the rights of its citizens. Especially commendable were the recent abolition of the death penalty, the improvements in the status of children, the specific amendments to the citizenship law, which had been an important area of discrimination, and the amendment of section 16 of the Constitution.

35. She assumed that section 16 of the Constitution, as amended, would override all inconsistent legislation. The wording of section 16 (3), however, could be taken to preclude affirmative action because it included in its description of discrimination any privileges or advantages accorded to one group that were not accorded to another group; and it would be interesting to learn if there had been any applications or interpretation of that particular provision of section 16 (3). Noting the very wide exception made with regard to personal laws relating to property, marriage and the like under section 16 (4) (c), possibly incompatible with the Covenant, she wondered about the status of personal law in the Mauritian legal system and to what extent it provided for different rights between husband and wife or between parents. A

further explanation of the Bhewa case, which had been alluded to twice in the report (with reference to the maintenance of monogamy (and of Muslim marriage), would be useful. The status of polygamous marriage in Mauritian law was unclear. Also, if the amendments to the Constitution had indeed fully established equality between spouses, would Mauritius thereby be led to withdraw its long-standing reservations in that connection to the Convention on the Elimination of All Forms of Discrimination against Women?

36. In addition to the amendments to section 16 of the Constitution, which applied only to legislation and public functions, Mauritius ought to consider the adoption of general anti-discrimination laws reflecting the general prohibition of discrimination under article 26 of the Covenant, thus affording a general guarantee of equality and non-discrimination in all sectors.

37. She welcomed the establishment of the Equal Opportunity Commission and asked whether equal pay in both public and private employment was guaranteed by law.

38. The extent of discrimination against aliens needed clarification: they did not benefit from the protection of section 16 of the Constitution, whereas articles 12, 13 and 25 of the Covenant permitted only limited exceptions to equal rights in the case of non-citizens.

39. Regarding emergency laws, further information would be useful on how section 18 of the Constitution was applied and what laws gave it full force. Section 18 appeared to allow the anti-discriminatory provisions of sections 6 and 16 of the Constitution to be overridden, in contrast to article 4 of the Covenant, which did not allow discrimination in any measures adopted in time of public emergency.

40. In connection with articles 25 and 1 of the Covenant, it would be interesting to know the outcome of the UDM case, whether the election result had been set aside and how it had affected the complainant's right to stand for Parliament. Information on the procedures for election to the seats in Parliament reserved for ethnic candidates would also be useful.

41. Mr. KRETZMER, endorsing Mrs. Chanet's and Ms. Evatt's remarks on the amendment to the Constitution, said that, given the distinctions in practice because of the multiracial traditions in Mauritius, it was still not clear, in the light of section 16 (4) (c) of the Constitution, what status personal law had in relation to civil law in Mauritius, and what areas of personal law might lead to discrimination between men and women.

42. Mr. BÁN observed that Mauritius had clearly made considerable strides in the field of human rights since the previous report: the Constitution had been amended in substantial points, the death penalty had been abolished and a series of anti-discrimination laws had been adopted. He wondered in that connection whether the amendment of section 16 of the Constitution would now set aside section 242 of the Criminal Code, which did not provide for equal treatment of men and women. Also, he would like an explanation of the terms "race, caste, place of origin", as they were used in section 16 of the Constitution.

43. It was difficult to assess the real status of the Covenant in Mauritius's legal system because of contradictory statements on the matter in various parts of the report. Document HRI/CORE/1/Add.60 indicated (para. 12) that the terms of the Covenant as such were not directly enforceable by the courts, and the report itself indicated that the Supreme Court had no jurisdiction to invalidate breaches of the Covenant. Since the Government had incorporated the Geneva Conventions into its law, it was difficult to see why the same could not be done in the case of the Covenant. Did the Government have any intention of reconsidering the status of the Covenant in domestic law?

44. In connection with article 25 of the Covenant, the Attorney General had suggested in his remarks that there was dissatisfaction with the election laws and a reform was planned: an explanation of the main problems with the current legislation would be appreciated.

45. Mr. KLEIN observed that the amendment of section 16 of the Constitution had resolved many inconsistencies with the Covenant and was to be commended. He wondered whether there were any plans to amend section 242 of the Criminal Code, which the report described as one of the last vestiges of sexual discrimination in Mauritius.

46. Although the report described the Guyot case as a case not of gender discrimination but of alien/citizen discrimination, he was inclined to think that the complaint did indeed involve discrimination based on sex. It would be interesting to know if the case would be decided differently now, after the prohibition of sex discrimination under amended section 16 of the Constitution. In any case, the court decision cited seemed to be inconsistent with article 3 of the Covenant.

47. Mr. ANDO said that he would welcome more information about the place of the Covenant in the domestic legal system of Mauritius; he was concerned that in cases where the Supreme Court had uncovered a discrepancy between domestic law and the provisions of the Covenant, the Mauritian courts could do little to remedy the situation. That function apparently devolved on the Human Rights Committee, whose decisions had no legally binding force. It was surely more sensible for the domestic courts to implement the provisions of the Covenant.

48. With regard to the issue of discrimination on grounds of sex, he agreed that it was very difficult to determine de facto instances of such discrimination, particularly in a multiethnic society where different customs obtained. He would be grateful for more details on specific measures that had been taken to combat such discrimination in accordance with the provisions of the Covenant, for example in the field of personal law, inheritance and ownership of property.

49. He also required further clarification on the legal concept of minorities in Mauritian jurisprudence.

50. Mr. BHAGWATI, referring to section 16 (2) of the Constitution, asked whether the prohibition of discrimination mentioned therein applied to persons working in public sector corporations. Since both foreign husbands and foreign

wives of Mauritian citizens required a work permit under the new legislation on restrictions on the employment of non-citizens, a court might simply take the view that neither the husband nor the wife of a Mauritian citizen should obtain such a permit, thus eliminating altogether the possibility of discrimination in that area.

51. He indicated that section 16 (4) (b) of the Constitution of Mauritius appeared to discriminate against persons who were not citizens of Mauritius and thus violated article 26 of the Covenant. The Mauritian authorities should also clarify their position with regard to extradition. If a court found that an extradition order would deprive an individual of entitlements under Mauritian law, he wished to know whether such an order would still be made.

52. Noting that detention in police custody was allowed for a maximum of 36 hours without charges being brought before a court, he wondered whether such a provision violated article 9, paragraph 3, of the Covenant.

53. The reporting State should have indicated whether it had an equal remuneration act or an act specifically preventing discrimination in employment. In addition, section 16 of the Constitution appeared to rule out the possibility of affirmative action, and additional information would be welcome on whether that was indeed the case. Finally, he wished to know whether the Mauritian authorities had disseminated the contents of its reports to the Committee before submitting them, and whether individuals had direct access to the Supreme Court without having to pass through the entire judicial system.

54. Mr. BUERGENTHAL asked whether the population of the islands of Agalega and St. Brandon were represented in parliament and, if not, how the Mauritian Government intended to enfranchise them.

55. Lord COLVILLE, referring to the "persuasive character" of the provisions of the Covenant mentioned in paragraph 12 of the core document (HRI/CORE/1/Add.60), asked the representatives of Mauritius to provide examples of such persuasive force. It would be interesting to know whether, in Mauritius as in some other countries, interpretations of points of law that favoured the provisions of the Covenant were automatically preferred to other interpretations.

56. In connection with article 24 of the Covenant, it would be useful to know what account, if any, was taken of the views of children in legal proceedings, for example in cases involving family violence.

57. Ms. MEDINA QUIROGA voiced concern that the category of persons mentioned in section 16 (4) (c) of the Mauritian Constitution had been barred from taking advantage of anti-discrimination laws, especially in the light of section 16 (6). She also asked whether a distinction between legitimate and illegitimate children was still maintained in Mauritian law, and whether both categories enjoyed equal rights in respect of child support and ownership of property.

58. Mr. SEETHULSINGH (Mauritius) said that there could be no derogations from articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant, even in a state of emergency. However, it was true that section 18 of the Constitution permitted derogations from section 16 of the Constitution in such circumstances.

59. Regarding the point that had been made about determining the validity of elections, he said that the Mauritian authorities believed in the separation of powers and therefore considered it undesirable for an elected body to decide on the validity or otherwise of elections. Courts were the appropriate places to settle matters pertaining to validity and qualifications of candidates.

60. With regard to the repercussions of the Bhewa case mentioned in the third periodic report (CCPR/C/64/Add.12*), he explained that section 16 (4) (c) of the Constitution left the door open for the potential enactment of supplementary personal law while avoiding the charge of unconstitutionality. Mauritian personal law was based on the French system, and had been updated in 1981 to take account of corresponding changes that had been made to that system in France.

61. Responding to the charge that section 16 of the Constitution made no mention of discrimination on the grounds of language, social origin or religion, he explained that discrimination on religious grounds had already been ruled out by section 11, dealing with freedom of conscience. Regarding the language issue, there was no bar to teachers instructing their pupils in local languages, but no examinations were held in those languages since they lacked a standard script. Compared to English and French, local languages had a very limited application and there was little point in using them for anything but day-to-day communication.

62. On the issue of accelerated acquisition of citizenship in return for substantial investment in the country, he said that the Mauritian authorities did not regard the question as one of discrimination but as one of economic reality. Like other countries, Mauritius tried to attract as much investment as possible and individuals who created employment and facilitated the transfer of technology were rewarded accordingly.

The meeting rose at 1 p.m.